APPEAL NO. 020625
FILED APRIL 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was scheduled for November 20, 2001, but the appellant (claimant) failed to appear. The show cause hearing and hearing on the merits was held on February 7, 2002. She found that the claimant did not sustain a compensable injury on _____; that she did not have disability; and that the claimed injury did not extend to her thoracic spine or radiating pain to the upper extremity.

The claimant has appealed the adverse determinations. The respondent (carrier) responds that while it is unclear from the claimant's appeal that all three findings have been appealed, the hearing officer's decision is supported by sufficient evidence.

DECISION

Reversed and rendered in part, affirmed in part.

The claimant in this case contended that, as she pushed off from the armrests of her office chair while rising from it at the end of the workday, after doing data entry and typing, she felt a snap in her middle back on the right side. (Medical records indicated low back pain.) She developed considerable pain by the time she arrived home. This occurred on Saturday, _____. There was also testimony that the claimant, who was headed to a grandchild's birthday party that was going to have a "moonwalk," demonstrated her jumping technique for her coworkers. The claimant did not attend the party due to pain.

WHETHER THE CLAIMANT SUSTAINED A COMPENSABLE INJURY

The hearing officer's decision indicated that she believed that the injury happened when the claimant rose from her chair, not when she was demonstrating her jumping technique. However, the hearing officer's stated reasoning for finding that no compensable injury occurred was "[t]he Appeals Panel has held that standing up without more is the type of activity that is a normal occurrence without regard to the work situation and has nothing to do with the furthering [of] the business of the employer."

To the contrary, the Appeals Panel has many times held that a worker does not move in and out of the scope of employment during the workday because his activity parallels one which could be performed off the job. Texas Workers' Compensation Commission Appeal No. 990896, decided June 14, 1999 (unpublished); *see* also Texas Workers' Compensation Commission Appeal No. 951576, decided November 9, 1995. The carrier cites Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997, as supportive of the hearing officer's decision, although the Appeals Panel has expressly declined to follow that case in a situation with similar facts. *See* Texas

Workers' Compensation Commission Appeal No. 992086, decided October 28, 1999. Furthermore, the inquiry was not limited to whether the claimant was injured in the act of standing, but whether an instrumentality of the employer was involved. In this case, pushing off from the armrests of the work chair while standing from a desk involves an instrumentality of the workplace. Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). Because we believe the hearing officer erred as a matter of law by holding that the injury did not occur within the course and scope of employment if the claimant did not also bend or twist while standing up from her chair, and she otherwise believed that rising from the chair at work caused injury, we reverse and render the decision that the claimant sustained a compensable injury on _____.

EXTENT OF INJURY

The claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) claiming injury to her low back. The treating doctor indicates that he was treating injuries to the lumbar spine area and sciatica. An extent-of-injury issue regarding the thoracic spine and upper extremity pain was not reported from the benefit review conference but was added by agreement of the parties midway through the CCH. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence on this issue. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). We cannot agree that the determination that the claimant did not injure her thoracic spine or upper extremity is against the great weight and preponderance of the evidence and we affirm this part of the decision.

DISABILITY

The claimant testified that she was not seeking ten months of income benefits (although she had not worked in this period of time) and testified that she felt she could have returned to work six weeks after the injury, although her doctor told her she was not "fully recovered." The treating doctor observed increased pain on palpation and decreased range of motion in the hips. The only report in evidence from this doctor that opines about ability to work is dated July 6, 2001, and it states that the claimant is unable to "return to gainful employment at this time." The hearing officer determined the disability issue independently of the erroneous holding that the claimant's injury did not arise from the course and scope of employment.

While another finder of fact could have drawn different inferences, the determination that the claimant did not have an inability to obtain and retain employment due to her injury is not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust, and we affirm this part of the hearing officer's decision.

For reasons stated above, we reverse the decision that there was no compensable injury and render a decision that the claimant sustained a compensable back injury in the course and scope of employment on _____; we affirm the decision that she did not have disability from April 1, 2001, until the date of the CCH and also affirm the decision that the injury did not extend to the thoracic spine or upper extremity.

The true corporate name of the insurance carrier is **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge